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-----	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION: BERGEN COUNTY
KEITH KAZMARK,	:	
	:	DOCKET NO.:
Plaintiff,	:	
	:	<b>CIVIL ACTION</b>
	:	
-VS-	:	
	:	<b>COMPLAINT</b>
BOROUGH OF ELMWOOD PARK;	:	
COUNTY OF BERGEN, JOHN & JANE DOE	:	
1-10; XYZ CORPORATION (1-10),	:	
	:	
Defendants.	:	
-----	:	

Plaintiff Keith Kazmark, residing in Woodland Park, County of Passaic, State of New Jersey, by way of this Complaint and Jury Demand against Defendants Borough of Elmwood Park; County of Bergen, John & Jane Doe, 1-10; XYZ Corporation (1-10), hereby says through his Legal Counsel:

# **I. STATEMENT OF THE CASE**

Keith Kazmark honorably served as the Clerk/Administrator for the Borough of Elmwood Park for a period of twelve (12) years. He was constructively discharged from his position with the Borough, as a victim of repeated harassment, retaliation, and disparate treatment. More specifically, the administration in the Borough of Elmwood Park from June

2017 to the present, applied Borough rules and regulations, policies and procedures and/or mandates/directives disparately and in such a manner as to harass and retaliate against Mr. Keith Kazmark as against his rights guaranteed to him under the United States Constitution, the New Jersey Constitution, the Contentious Employee Protection Act (CEPA), the Civil Rights Act, the Public Employer-Employee Relations Act, State Laws and Regulations, the contractual provisions which governed his employment, and New Jersey Law Against Discrimination (LAD).

2. Of particular note, is the fact that Mr. Kazmark in his position as the Municipal Clerk for the Borough of Elmwood Park, became aware of possible improper activities relative to the Mayoral Primary and General Elections in 2017, and brought the same to the attention of his superiors and elected officials in the Borough of Elmwood Park (as well as others). From the moment that Mr. Kazmark brought forward information regarding possible election fraud, he was subjected to a hostile work environment, infliction of distress, retaliation and disparate treatment – which violated all employment laws and standards in New Jersey. To include but not limited to CEPA and LAD.

3. Although Mr. Kazmark was forced to leave his position of employment ( at the end of August 2018), the Borough of Elmwood Park continues to retaliate against Mr. Kazmark for his protected activities, as a whistleblower for political reasons, and to retaliate against him by spreading false and malicious statements about him.

4. Approximately two weeks prior to the November 2017 General Election, Mr. Kazmark advised the County Superintendent of Elections to alert her to rumors of election fraud in Elmwood Park with regard to the forthcoming election. Specifically, he was advised by a number of people within the Elmwood Park Community that Francesco Caramagna, then a School Board Member and Candidate for Mayor, was handling Vote By Mail Ballots (VBMs) then allowed by law, for the said election.

5. The morning after the October 19, 2017 Council Work Session Meeting, Councilman Dan Golabek came to his office where a discussion ensued.

6. Issues regarding the VBM process, the statute regarding the handling of VBM's and related issues were discussed with Councilman Golabek who did not seem to be so concerned about the issue, and did not report any of the alleged improprieties.

7. Additionally, incumbent Mayor Robert Colletti also shared his concerns about Mr. Caramagna and the VBM process with Mr. Kazmark.

8. In a subsequent conversation with Councilman Golabek, he advised Mr. Kazmark that as the election got closer, VBM ballots would be needed for a Caramagna victory, and it was "a challenge", since individuals (bearers) could only bare three (3) ballots each, and there were a lot of ballots that needed to be collected. There it was specifically implied that Caramagna and his supporters needed to violate the law in order to win the election.

9. As a result therefrom, Mr. Kazmark was compelled to call the Superintendent of Elections, who recorded his report, and indicated that her office would take this information under advisement.

10. Mr. Caramagna won the election for the Mayor of Elmwood Park and was sworn in on November 17, 2017.

11. On January 17, 2018, following a meeting with a proposed developer to build a supermarket, Mayor Caramagna approached Mr. Kazmark and said: "I know that you made calls before the election and about the salary change." This was an ominous statement and a direct threat to Mr. Kazmark's employment with the Borough of Elmwood Park.

12. In December of 2017, the Salary Ordinance for the Borough of Elmwood Park was changed by the Mayor and Council – prior to Caramagna taking office as Mayor.

13. The said Salary Ordinance for the Borough of Elmwood Park was changed in December of 2017, which combined both the Municipal Clerk Salary and the Administrative Responsibilities of the Municipal Clerk Salary into one line item.

14. Prior thereto, Democratic Councilman Dan Golabek stated to Mr. Kazmark that if the Mayor "fully understood" what the Republicans (outgoing majority) were doing there would be retribution against Mr. Kazmark. The reference to the Mayor was to Mayor-Elect Francesco Caramagna, who would punish Mr. Kazmark for the Council's action.

#### **MAYOR ELECT MEETING WITH SUSPENDED POLICE OFFICERS**

15. On the evening of November 17, 2017, at 8:35 P.M., following the swearing-in ceremony of Francesco Caramagna, Mr. Kazmark received a telephone call from an Elmwood Park employee. That employee advised Mr. Kazmark that following the police ceremony he learned that Mayor Caramagna had a meeting with suspended police officers.

16. Specifically, prior to being sworn-in as Mayor, Francesco Caramagna had met with several Police Officers (suspended), regarding their employment.

17. These individuals both attended the Mayor's Swearing-in and advised others in attendance that they had a meeting with the Mayor (while Mayor-Elect), and that the reasons for their suspension would "go away".

18. After receiving this information, Mr. Kazmark advised the said Borough employee who confided in him that this information needed to be immediately reported to the Bergen County Prosecutor's Office. That employee advised Mr. Kazmark that he would promptly contact the Bergen County Prosecutor's Office on Monday morning, and report this information.

19. The matter was then conferenced with the then Borough Attorney, who agreed that the employee needed to report the said matter to the Bergen County Prosecutor's Office immediately, as all of these actions taken by Mayor Caramagna were inappropriate and improper.

### **VIOLATIONS OF THE OPEN PUBLIC MEETINGS ACT**

20. At approximately 12:50 P.M. on Sunday, November 19, 2017, Mr. Kazmark received a telephone call from his Deputy Clerk, Ms. Barbara DeSpoto. She advised that Council Members Dombrowski and Golabek came into her Clerk's Office while she was there finishing up some work she had pending due to her having the week ahead off.

21. Mr. Kazmark promptly called her back to make sure that the Council did not need anything and she mentioned that they were "surprised" to see her and asked her why she was there?

22. Prior to these Council Members appearing at the Municipal Building, Mr. Kazmark had advised Councilman Golabek that meetings should not take place at the Municipal Building without proper notice, based upon a violation or perceived violation of the Open Public Meetings Act.

23. When Mr. Kazmark saw Mr. Golabek the following week, he again reiterated his concerns about possible violations of the Open Public Meetings Act. In reply, Councilman Golabek stated to Mr. Kazmark: "I am sure you and Barbara will remain quiet, since other than the council you are the only two that aware of this meeting."!!

24. That same day, Mr. Kazmark advised the then Borough Attorney of the meeting and the comments made by Councilman Golabek.

### **DISCRIMINATORY COMMENTS TO MR. KAZMARK**

25. On November 28, 2017, the Mayor, Councilman Golabec and Mr. Kazmark, visited the DPW Building where they met with DPW Superintendent Scott Carcz to view the Town Clock which was in storage at that location.

26. The Mayor arrived at one point, and stated: "Mr. Kazmark, what is that? what exactly are you? "Not Italian".

27. To which Mr. Kazmark's responded in a joking way "just about everything, but Italian". "but I grew up in Woodland Park and have a lot of Italian friends." To which the Mayor responded, "I don't think that counts. You're not one of us." To which Councilman Golabek raised his eyebrows and shook his head.

28. On Tuesday, December 12, 2017 at approximately 12:00 Noon, following a meeting with the Chief of Police concerning the Mayor going outside the chain of command and speaking to police brass behind closed doors without the Chief's knowledge, Mr. Kazmark received a call from the Recreation Director, who advised him that she had a meeting with the Mayor on Thursday, December 7, 2017. At the end of that meeting, the Mayor referenced a note he received from a resident of North Haledon congratulating him upon his election victory. The Mayor further stated to Donna that: "He knew a lot of people in North Haledon and could make her lose the next time she runs for her seat." Note, Donna Pugliese is also a North Haledon Republican Councilwoman.

29. Donna attempted to joke it off and stated "come on Mayor, you wouldn't do that, you'd support me." To which the Mayor replied, "I would never support you unless you switch parties."

30. On at least a dozen occasions, Mayor Caramagna threatened to oppose Mr. Kazmark in his capacity as Mayor of Woodland Park's re-election, stating that Mr. Kazmark needed to cooperate and that Mr. Kazmark should be aware of the fact that Mayor Caramagna had a lot of friends in Woodland Park and controlled a lot of votes there!

#### **Opposition to Professional Relationship with Republican Council Member:**

31. In July of 2017, then Elmwood Park Councilwoman Maggie Giandomenico (R) was appointed as the Acting Borough Clerk/Administrator in Park Ridge. The Councilwoman reached out to Mr. Kazmark via phone at that time and in subsequent conversations sought advice and guidance on her new positions. Mr. Kazmark told her that he would be glad to help her in any way he could.

32. At the December 7, 2017 Executive Session the topic of staffing was discussed in the Mayor's Office, and Councilman Joe Dombrowski asked Councilwoman Giandomencio "how's the new job going?" She replied, "It's going, I have to finish the classes and take the test. That's the obstacle." To which Mr. Kazmark said, "If she doesn't know, she calls me." To which she acknowledged his help and was appreciative. However, the councilman did not seem pleased that Mr. Kazmark was helping the councilwoman who was from an opposing political party.

33. The following day, on Friday, December 8, 2017, after a meeting with Paul Drake and other associates from PSE&G, Mayor Caramagna came into Mr. Kazmark's office and stated, "Your friends with Maggie?" Mr. Kazmark responded by saying that she had asked Mr. Kazmark questions relating to her new positions and that Mr. Kazmark considered her a friend and colleague. Mr. Kazmark also explained that he has always treated Council Members the same way regardless of their political party and that he had prided himself on not getting

involved in the politics of Elmwood Park. The Mayor then said, "You're a Democrat. Don't be her friend or there will be trouble. She's nasty and she's a troublemaker." He then casually referenced a discussion about the appointment of his new secretary to the Mayor's Office from last night, where Councilwoman Giandomenico stated that she would abstain from the appointment as the candidate for the secretary job was previously employed by Park Ridge, where there were issues, and she did not want the appearance of a conflict. Mayor Caramagna then said as he got up to leave, "she'd better remember who runs Park Ridge (the town has a Democratic majority). We can call up there and talk to those people!"

34. Upon the Mayor's departure, Mr. Kazmark documented this encounter as he felt a threatening tone towards himself and also the strong indication that the Mayor was intending on contacting officials in Park Ridge to potentially threaten Councilwoman Giandomenico's employment with that municipality.

35. Multiple other references, from February 2018 through June of 2018, almost weekly were made about Councilwoman Giandomenico and her being "nasty", "uncooperative", "mean", "difficult etc. by the Mayor, and that she needed to be avoided.

36. As a follow-up to this documentation, Councilwoman Giandomenico did indicate to Mr. Kazmark after his departure from Elmwood Park, that the Mayor had contacted officials "at the County" and by extension in Park Ridge regarding her appointment there.

#### **Intimidation and Harassment Comments and Conduct:**

37. The Mayor entered Mr. Kazmark's outer office on Monday, December 11, 2017 and during a brief conversation stated, "You know, things we talk about in there (pointing with his thumb to Mr. Kazmark's office), I'm hearing from people. Private things, I'm hearing." To which Mr. Kazmark responded, "I'm not sure what you mean, Mayor." And he responded, "You better watch out. We'll talk another day."

38. A pattern of constant reminders that Mr. Kazmark (along with other employees) had to "cooperate" was prevalent from the moment the Mayor was elected and from certain Council members including Golabek, Dombrowski and Balistreri.

#### **Intimidation and Interference Into Administrative Matters:**

39. On Monday, February 5, 2018, Mr. Kazmark was asked by the Mayor to join him at the re-election announcement of County Executive James Tedesco in Hackensack, NJ - as the Bergen County Mayor's Round Table with Governor Murphy would immediately follow in Teaneck and the Mayor wanted Mr. Kazmark to attend with him. While in transit to and from the Tedesco announcement to the Mayor's event, Mayor Caramagna addressed two items that were very important to him.

40. The first was the terminal time of the Borough's CFO. The Mayor stated the Finance Department was being discussed in Executive Session at the February 8, 2018 Work



Session meeting. He further stated that the CFO had been pressuring him about a raise and the amount of terminal time due him at retirement. Mr. Kazmark was clear with the Mayor that any salary adjustment was at the discretion of the Council, but warned him that it could lead to moral issues with other employees. Of greater concern was the issue of terminal time. Mr. Kazmark advised the Mayor that the CFO had been hired in 1998. The ordinance to reduce terminal time (down) had been in effect since 1991 (prior it had been 4 months). He claimed that the CFO had insisted he had been "promised" 4 months. Mr. Kazmark told the Mayor there was nothing in writing and that giving him 4 months would violate the ordinance. The Mayor stated, "you have to figure this out. He's one of us. We need to help him." Mr. Kazmark again advised the Mayor that doing so would be breaking the law adopted in 1991 and that he should speak to the Borough Attorney. The Mayor stated the Borough Attorney had a conflict on matters concerning the CFO and could not be consulted.

41. After leaving the Mayor's Round Table, when in the car, the Mayor brought up a Police Officer who had ongoing Internal Affairs Investigations against him. The Mayor told Mr. Kazmark that, "The Chief (meaning former Chief, the officer's father), has been calling, and calling and calling about this. How do we fix this? He's not a bad boy. There's problems with the wife, but we need to clear this up and move on. The father is my friend and his kid can't lose his job. Plus, he's mad at me now."

42. In response, Mr. Kazmark stated: that neither he nor the Mayor can get involved in investigations. It would be improper and unethical. Mr. Kazmark told him that as Mayor, sometimes you are going to make your friends upset by the decisions you make. It's part of the job. He then pressed Mr. Kazmark to "do something" he asked Mr. Kazmark have the new Chief "end the witch hunt." Mr. Kazmark told the Mayor he would relay his concerns to the Chief as he did not have any other answer and could sense the Mayor was getting agitated with him. The Mayor ended the conversation with, "You aren't helping me today." The rest of the car ride back to the Municipal Building was completely silent.

#### **Use of Mosquito Jungle Field – NJ DOT Contract Violation:**

43. On Friday, April 13, 2018, Mr. Kazmark was called by Recreation Director Donna Puglisi after work hours (although Mr. Kazmark was off from work on that date) advising him Mayor Caramagna had called her and that he wanted her to give permission for a Men's Softball League, run by a resident. Permission to use the field at Mosquito Jungle is limited because it's a field owned by the State of New Jersey

44. Prior to this, the Mayor had delivered a letter from the said resident to Mr. Kazmark requesting use of the said field. Mr. Kazmark advised the Mayor that the contract with the State included a provision that only elementary school children could use said field. Mr. Kazmark further advised him that he would list the citizen's letter for Council work session.

45. That agenda item was discussed by the full Mayor and Council on Thursday, April 12, 2018 (the prior day), where Mr. Kazmark advised them that Mrs. Puglisi had reached out to the State seeking a change to the contract. The Mayor and Council requested that Mr. Kazmark phone the NJ DOT to attempt to expedite the decision from NJ DOT.

46. In Mr. Kazmark's conversations with Mrs. Puglisi, she and Mr. Kazmark agreed that they felt strongly that they could not violate the terms and conditions of the contract and both advised the Mayor in subsequent conversations that it was not advisable for him to grant them use of the field, as they also had liability concerns. Mrs. Puglisi advised Mr. Kazmark she would not sign the field permit.

47. After those discussions, Mr. Kazmark contacted the Borough Attorney, who concurred with Mr. Kazmark and Mrs. Puglisi's position. The attorney planned to contact the Mayor to discuss this issue.

48. Therefore, the Borough Attorney contacted Mr. Kazmark on Saturday morning, April 14, 2018 and advised Mr. Kazmark that he spoke to the Mayor and that while the Mayor was upset with Mr. Kazmark and Mrs. Puglisi about "making a big deal" out of this, he understood we needed to get an answer from NJ DOT.

#### **Verbal Harassment – Opening Day of Softball Season 2018:**

49. On Saturday morning, April 14, 2018, Mr. Kazmark received a phone call from Councilman Joe Dombrowski advising Mr. Kazmark of "unacceptable conditions" at Borough Field for Opening Day of Softball. The Councilman stated that he had directed Mr. Kazmark and Mrs. Puglisi to address the situation at a meeting the prior week. He further began to berate Mr. Kazmark stating that Donna and Mr. Kazmark were "not doing their jobs" and kept stating that the "ball was dropped." After letting the Councilman vent for a few minutes, Mr. Kazmark did state that he vaguely remembered he and Donna having some dialogue about addressing the field prior to Opening Day, and assumed it had been addressed. Mr. Kazmark then told him that all we could do now was call out DPW to cordon off the area he was concerned about. The councilman told Mr. Kazmark this needed to be "documented" and that he would be sending an e-mail. He then stated that discipline was in order. He did so to Mr. Kazmark, Donna and the entire Governing Body. After the call, Mr. Kazmark phoned Scott Karcz and he mobilized the DPW to post barricades at the field.

50. Following that call with the Councilman, individuals who were also at the field for Opening Day advised Mr. Kazmark that Councilman Dombrowski continued to rant about him and Donna Puglisi. He also did so to Scott Karcz upon his arrival. At that time, Mr. Kazmark decided to go to the field from his home in order to ensure that the situation was under control. Mr. Kazmark had also attempted to contact Donna Puglisi multiple times with no success.

51. Upon Mr. Kazmark's arrival, he spoke to Mr. Karcz, who had his men arranging the barricades. He told Mr. Karcz that the Councilman was very upset and vented to him about Mr. Kazmark and Donna. Mr. Karcz also seemed shaken up by the Councilman, who had left by this point. The only Councilperson Mr. Kazmark saw at the time was Councilwoman Balistreri who only said "hello" to Mr. Kazmark from afar. While Mr. Kazmark was with Mr. Karcz, Councilman Dombrowski called his cell phone. When Mr. Kazmark answered, he advised the Councilman that he was there, that the situation had been mitigated and suggested a more



thorough conversation on Monday. Mr. Kazmark was quite upset at this point, after the councilman's comments to others at the field, and with the situation remedied, Mr. Kazmark felt it best to hold off on further conversation based upon the councilman's harassing tone. Councilman Dombrowski was clearly annoyed, by Mr. Kazmark asking to end the conversation and further told Mr. Kazmark that he was very upset about the entire situation.

52. A few minutes later, the Borough Attorney called Mr. Kazmark to discuss the men's softball team's use of the field in town. Mr. Kazmark advised him of the situation with Councilman Dombrowski, and how his job was being threatened again.

53. On Monday morning, April 16, 2018, Mr. Kazmark went to text Councilman Dombrowski so they could arrange a time to talk. Mr. Kazmark found a text message from 4:21 pm on Saturday that Mr. Kazmark had not previously seen. The text, which Mr. Kazmark stored, carries the same confrontational and harassing tone as all the verbal communication of earlier that day. Mr. Kazmark did write to the Council and offered to talk even after reviewing the text. The Councilman advised he could not meet as he had work commitments.

#### **Directive to Mr. Kazmark Intimidate White/Blue Collar Union Representatives:**

54. Mr. Kazmark had been directed to meet with the White/Blue Collar Union Representatives regarding the Council's desire to adjust working hours for a clerical position at the Recreation Department to allow for evening hours. Mr. Kazmark had previously advised the Council that they could not change the hours of a union employee, even a new hire, without first negotiating the new hours into the union contract. On Wednesday, April 18, 2018, Mr. Kazmark met with the shop stewards for the group regarding said issue at the direction of the Council.

55. The council advised Mr. Kazmark that preliminarily they would want to hold off discussing any changes to the hours until negotiations for the full contract began, circa June of this year. They advised that they would need to poll their members. Mr. Kazmark asked for an answer by the next day as we were to have an Executive Session that night, Thursday, April 19, 2018, and Mr. Kazmark wanted to be prepared for the meeting as this was a hot topic for the Council.

56. On April 19, 2018, Mr. Kazmark received a call from Council President Dan Golabek, who inquired about this matter. Mr. Kazmark advised him of the meeting held the day before and the result of that meeting, outlined above. The Councilman then directed Mr. Kazmark to advise them that if they weren't ready to discuss hours, the Council may consider pulling a resolution, listed for the same night, modifying the contract and changing the word "stipend." This was considered clarifying language, and not a tangible item for negotiations. Mr. Kazmark advised the Council President of that difference and he strongly reinforced his directive to make the potential of pulling of the resolution clear.

57. Mr. Kazmark then sent an e-mail to Borough Attorney seeking his counsel as to whether he was comfortable with Mr. Kazmark having this conversation. At 1:21 pm, Mr. Kazmark received a call from Mr. the Attorney by the Council President. The Attorney stated that we would be "laying out a quid pro quo" and is not legally advisable. He suggested Mr.

Kazmark advise the Council President to table the resolution from tonight's agenda should he wish not to approve it and hold it for further discussion. After concluding the call with the Attorney, Mr. Kazmark contacted Council President Golabek and advised him of the same. He responded by saying he was "disappointed" in Mr. Kazmark.

58. While Mr. Kazmark had been on record as supporting staffing the Recreation Department Office with part-time, rather than full-time staff, to accommodate evening hours, Mr. Kazmark was very uncomfortable threatening union officials in the manner directed by Council President Golabek. The Union Representatives asked Mr. Kazmark subsequently whether he was "pressuring them with threats" on how negotiations would go if they failed to agree to the hour changes demanded by the Council. Mr. Kazmark advised them that he was simply relaying the Council's desire to change the hours to them, and it would be up to the Governing Body as to whether they acted upon the "stipend" language resolution.

59. At the Council meeting of April 19, 2018, the Council did, in fact, table Resolution 155-18 which was the clarification "stipend" language change. The motion was made by Council President Golabek.

60. At the conclusion of this topic at the Executive Session on the same date, which are not audio recorded, Councilwoman Sandra Balistreri said to Council President Golabek, "they need to know who the bosses are," with regard to Mr. Kazmark and Mrs. Puglisi who were both in attendance and presented alternatives to providing evening hours at the Recreation Center. To which Golabek replied, "you are absolutely right."

#### **Hiring of Building Department Clerical Staff:**

61. Approximately 2 weeks prior to June 15, 2018, Mayor Frank Caramagna visited Mr. Kazmark's office to discuss staffing in the Building Department. He shared with Mr. Kazmark that he was concerned about the office's turnaround of permits.

62. The Mayor suggested the hiring of Dorin Aspras for part-time clerical support in said Department. The Mayor knew that Mr. Kazmark would have reservations about this appointment as Ms. Aspras and Deputy Clerk Barbara Dispoto had a difficult relationship while serving in PTA capacities at Gantner Avenue School years ago. The Mayor told Mr. Kazmark to tell Barbara to "calm down." This despite the fact that Barbara was not aware of Ms. Aspras' possible hiring.

63. The part-time clerical position was discussed at the Work Session on June 7, 2018 with the Mayor and Council requesting current and past year salary information for the Building Department. It was re-listed for the Work Session on June 14, 2018.

64. On June 14, 2018, shortly before noon, Council President Golabek contacted Mr. Kazmark via phone while Barbara and Mr. Kazmark were driving to a BCMCA meeting at Seasons in Washington Township. He was on Bluetooth and Mr. Kazmark disclosed on the outset of the conversation that he was in the car with Barbara. The Councilman brought up this

agenda topic and discussed how to handle the Mayor's desire to hire Ms. Aspras. He stated that he was not totally committed to the creation of the position, but if one were to be made it would need to be her. He encouraged Mr. Kazmark to punt the topic and not call for a decision that evening. Ms. Disputo and Mr. Kazmark shared their concern, not so much over the Disputo/Aspras relationship, but also the very close friendship between Ms. Aspras and an existing employee in the Building Department.

65. The Council President made a comment that this needed to be handled "carefully" and that Ms. Aspras was a member of the Board of Education and the Superintendent's position was open and that a Councilwoman's daughter was going to apply and that she was the "favored candidate."

66. The call ended as they pulled into Season's for their class.

67. Later that afternoon, the Council President visited Mr. Kazmark's office and reiterated the conversation they had by phone in the car. He strongly suggested that a decision not to be called for that night and asked Mr. Kazmark to "walk him through" the steps of how to make it happen."

68. That evening, Mr. Kazmark asked for the Council to hold off on any appointment until he could speak to the Head of the Building Department, about his staffing concerns.

#### **Police Recruit – Failure to Pass Initial Psychological Evaluation:**

69. In early 2018, the Mayor and Council approved the hiring of new Police Officers, due to retirements, suspensions, and concerns about public safety. In early May of 2018, the Police Chief asked Mr. Kazmark to sit on an interview panel for new Police Officer candidates. He advised Mr. Kazmark the committee would be himself, two or three of his top brass, Council Members Dombrowski, Pellegrine and Chirido. He advised Mr. Kazmark that interviews would be held on May 21, 2018. During that conversation he stated, "I'm not sure if councilman Dombrowski wants you involved."

70. On said date, one of the candidates interviewed was a Borough resident, whose father was a Police Captain with another agency and her mother was a candidate for Elmwood Park Council. The candidate performed very well in her interview and was one of the recommended candidates for appointment, pending background checks, physical and psychological exams. During the week of June 4, 2018, the Chief and Mr. Kazmark had two conversations, one where he informed Mr. Kazmark that the candidate "failed the psychological exam." There was a conversation, wherein Mr. Kazmark's advice was requested on "calling the family in" to explain to them that she could not be appointed. Mr. Kazmark asked the Chief if that was standard procedure, and he stated it was not, but pointed out that the candidate's father was a Police Captain and her mother "could be our boss", so he felt we should extend some courtesy. Mr. Kazmark did not object and never heard anything further from the Chief about that meeting.

71. Prior to the June 14, 2018 Council work session, Mr. Kazmark was in his office with Councilwoman Lorraine Pellegrine who could see out Mr. Kazmark window from where she was sitting. She said, "Oh, there's our new police officer." To which Mr. Kazmark stated nothing in response to the Councilwoman.

72. In subsequent communications with the Police Chief, it was determined that the Police Officer who would be hired, – was the officer who previously failed the psychological examination.

73. That evening, at the end of the Council meeting, an Executive Session was held to interview the Police Officer candidates by the full Mayor and Council. At the start of the closed session, Mr. Kazmark asked the Mayor to be excused as the minutes of interviews only detail the names of the prospective hires. Mr. Kazmark told the Mayor that he would be in his office tending to another matter from the work session agenda that night. The Mayor excused Mr. Kazmark and he returned to the closed session following the last interview. Frankly, Mr. Kazmark felt extremely uncomfortable sitting in an interview with a Police Officer candidate, whose mother was a candidate for Council, supported by the Mayor and the majority on the Council, and knowing that the candidate had failed the psychological exam. As it was clear that the matter was revisited in an improper manner. No other police candidate would have been provided that treatment.

74. The following day, just before noon, the Mayor came to Mr. Kazmark's office and he advised him of the events of the previous night. Mayor Caramagna stated, "You need to back off. You are a mayor too. You know how it works. You need to calm down. We need to help our people. Be a good Democrat." He then wished Mr. Kazmark a good weekend and left Mr. Kazmark's office.

75. Mr. Kazmark subsequently had a conversation regarding this entire matter with Borough Attorney who said he would investigate it. Mr. Kazmark received no follow up on the matter.

#### **Harassment and Age Discrimination – Regarding the Fire Official:**

76. At the May 10, 2018 Council Work Meeting, Mr. Kazmark reported to the Mayor and Council (with Councilman Dombrowski absent) that Mr. Kazmark had begun discussions, at the Mayor's suggestion, with the Borough of Fair Lawn regarding the possibility of a shared services agreement to share their Fire Official who formally worked in the Fire Prevention Bureau in Elmwood Park and was entirely familiar with the Borough's operation. The agreement would have caused Elmwood Park to pay Fair Lawn the same amount as the retiring part-time Fire Official and the Borough would have had access through the shared services agreement to the new Fire Official for 18 additional hours per month. The Mayor and Council seemed to like the idea but requested that it be discussed again when Councilman Dombrowski was present.

77. At the June 7, 2018 Council Work Meeting the discussion was re-visited and it was demanded by Councilman Dombrowski that Mr. Kazmark cease any discussion with Fair

Lawn. He indicated that Mr. Kazmark had no authorization to discuss the topic with Fair Lawn and Mr. Kazmark responded that he had the legal authority to bring concepts to the Mayor and Council regarding personnel and the opportunities to share services with neighboring communities and other government agencies. The councilman's tone was hostile and demeaning. Mr. Kazmark further told him that Mayor Caramagna was the one who suggested the discussion with Fair Lawn. The councilman again demanded that no further discussion take place.

78. It was at that point Mr. Kazmark was advised by multiple people in the community that Councilman Dombrowski had his own plan to share Elmwood Park's Fire Official with Fair Lawn and Mr. Kazmark stood in the way of the councilman's plan.

79. At a July 2018 Council Meeting, Councilman Anthony Chirido asked Councilman Dombrowski about the status of interviewing for the position. He further asked whether the position would be full-time or part-time and about the possibility of shared services. Following this line of questioning, Councilman Dombrowski essentially commandeered the advertising, interviewing and selection process. He directed Mr. Kazmark's staff without following the chain of command, as to how to proceed with the hiring process for this position and on multiple occasions called the Asst. Municipal Clerk (lowest ranking employee in Mr. Kazmark office) and directed her to contact candidates, send emails to them and do follow up without contacting Mr. Kazmark or of the Deputy Clerk. Such communication was sent on July 19, 2018, to arrange interviews on which candidates to interview on July 23, 2018. Councilman Dombrowski's involvement only became more intense with visits to Mr. Kazmark's office and direct conversations with his employees and the candidates themselves, during that week in which Mr. Kazmark was out of the office due to his mother passing away. It should be noted that this all occurred during the period in which the Mayor was away in Italy as well, especially in light of the fact that the Mayor supported the shared service agreement with Fair Lawn. Thus Councilman Dombrowski expedited this process while the people who could stop his plan were out.

80. Following the interviews of the candidates, one of the applicants, long-time firefighter Ron Pressler, stopped in to see Mr. Kazmark in his office. He advised Mr. Kazmark that he had heard from multiple firefighters that Councilman Dombrowski stated to them that Mr. Pressler would "not be able to serve in the position for an extended period of time." He asked me whether Councilman Dombrowski had said that to Mr. Kazmark and he advised him he had not, but that Mr. Kazmark did hear from another Council member that such a comment had been made. He asked if Mr. Kazmark considered that "age discrimination." Mr. Kazmark told him that could not interpret the statement and that if he felt that way he should probably speak to an attorney. He advised Mr. Kazmark he may do that. Mr. Kazmark immediately contacted the Borough Attorney and advised him of what Mr. Pressler had told him. He told Mr. Kazmark he would look into the matter.

81. After contacting the Borough Attorney, Mr. Kazmark was the victim of harassing e-mails from Council President Golabek which were critical of both his staff, his actions, and his involvement with the hiring process for this position. Said e-mails cannot be provided as the Borough contends that it was the victim of a data hack after Mr. Kazmark leaving Elmwood Park and that all e-mails during Mr. Kazmark's tenure in Elmwood Park have been lost.



82. Steve Kochik was appointed as Interim Fire Official the next day at a special Council meeting on August 2, 2018.

83. It should also be noted that in Councilman Dombrowski's prepared remarks on August 16, 2018, regarding Mr. Kazmark's potential separation, wherein he stated that Mr. Kazmark did not properly counsel the Mayor and Council as to the Civil Service Commission rules and regulations with regard to this appointment. In fact, had Mr. Kazmark been part of the process, and had the Governing Body advised him that they desired to hire an internal inspector (Mr. Kochik), simple promotional action could have been taken and the need to advertise the position to outside candidates would have been unnecessary.

#### **Proposed Hiring of Councilwoman's Son as Special as a Police Officer:**

84. On July 11, 2018, following a morning meeting about the formation of a Stigma-Free Committee Mr. Kazmark n Elmwood Park, Councilwoman Sandra Balistreri asked if she could speak to Mr. Kazmark in his office. They spoke about the formation of the Stigma-Free committee and who could help from other towns to guide its formation. They also discussed a property maintenance issue. Prior to ending the one-on-one meeting, the Councilwoman asked Mr. Kazmark if he would do her a "favor." She then proceeded to advise Mr. Kazmark that her son, Tommy was looking to become a Special Police Officer Class II, as he was presently a Special Class I. She indicated that she was recused from Police Department issues, but advised that she had spoken to the Chief and the Mayor and wanted Mr. Kazmark's support. Mr. Kazmark advised her that it may be an issue because of the nepotism ordinance in town, but that Mr. Kazmark would need to speak with the Borough Attorney. She mentioned that the Mayor had told her earlier in the year that her daughter could not be hired because of the same ordinance and asked me what the process would be to eliminate the ordinance. Mr. Kazmark told her he would look into the issue.

85. The following week, a police officer visited Mr. Kazmark's office and addressed the same topic. Mr. Kazmark advised him that he would be calling Civil Service to determine whether the position was promotional or was an appointment to a new position. The officer stated that he was going from one rank of Special Police officer to another. Mr. Kazmark told him he would call and later that same day he did. Mr. Kazmark spoke to a representative from the Civil Service Commission via phone and he was advised that it is a "new appointment." Mr. Kazmark relayed that information back to a Police Officer, who later advised that he had would tell the Councilwoman. At the July 19, 2018 Council meeting Mr. Kazmark could sense that the Councilwoman was irritated with him.

86. At the August 2, 2018 Executive Session, a police officer began to discuss the appointment of the councilwoman's son as a Special Police Officer but was advised that could not be discussed as he had not been Rice Noticed for the meeting. Councilman Dombrowksi was clearly irritated by the inability to discuss the appointment and passed comments to the multiple people that Mr. Kazmark was attempting to "block" the appointment by using the nepotism ordinance. These comments were made to the Borough Attorney, in addition to certain employees and fellow Council members, and that Mr. Kazmark needed to, "shut his mouth."



87. Subsequently, after Mr. Kazmark's departure from Elmwood Park, it was posted on a social media outlet as part of a political campaign for Borough Council, that Councilwoman Giandomenico had sent an e-mail to Eugene Ward at the Civil Service Commission seeking information as to whether the appointment was a promotion. The response from Mr. Ward, provided on September 10, 2018, was that these titles are "Unclassified Titles" and that employees in unclassified titles are not entitled to promotional procedures. He further stated that if a person went from a Special I to a Special II position you would have to "separate" him by the procedural requirements – as outlined by the Borough or the agency.

88. Despite that response, and that the new position not being a promotional position, the Mayor and Council by a 3 yes – 2 no – 1 recused vote appointed the councilwoman's son on September 18, 2019, in violation of local Ordinance/Code of Ethics 2-56.10.

#### **Proposed Separation Agreement:**

89. In January of 2018 Mr. Kazmark's mother had been hospitalized for a lung condition that was incurable. Mr. Kazmark had advised the full Mayor and Council of her condition at the time and throughout her difficult fight from January 2018 through her death in July of 2018.

90. Leading up to and following the death of Mr. Kazmark's mother on July 27, 2018, it has become even more apparent that there was a strong desire amongst some Council members to either remove him or cause him to leave his position as Municipal Clerk/Administrator for the Borough of Elmwood Park. During his time home for bereavement, Mr. Kazmark thought a lot about the actions, words, and activities of the Elmwood Park Council majority, in general, but also as it related to Mr. Kazmark's position. It was clear that a pattern of harassment and a clearly hostile work environment was meant to compel Mr. Kazmark's resignation from Mr. Kazmark's tenured position. Which includes but is not limited to their illegal acts and retaliation. However, he did not want to leave his position in Elmwood Park, where he had dedicated a majority of his professional life and enjoyed working.

91. Therefore, at the August 2, 2018 Council meeting, while Mr. Kazmark was still on leave following Mr. Kazmark's mother's passing, Mr. Kazmark presented a Separation Agreement for the Council's consideration. It outlined terms and conditions, which were standard and customary Business Administrators who are separated from their employer. Most notable was the three months' payment, post-separation as per N.J.S.A. 40A:9-138, et seq. This would allow both parties to separate on a positive note, the Governing Body able to fill the position with a person of their choice and the employee able to seek other opportunities. The matter was held to the next meeting so the Mayor could be present after his return from Italy. The following morning the Mayor and Mr. Kazmark spoke via phone, while he was in Italy and Mr. Kazmark advised him of the proposed separation agreement. During this time, Mr. Kazmark was hoping that Elected Officials from Elmwood Park would change their ways and allow him to do his job without improper interference and continued harassment.

92. Upon the Mayor's return at a meeting held on Sunday, August 11, 2018, the Mayor and Mr. Kazmark met one-on-one in the Caucus Room to discuss the separation agreement and the path forward. He stated he did not want this to happen but acknowledged that certain members of the Council were "not happy" with Mr. Kazmark. They discussed various issues that arose while he was gone and discussed Mr. Kazmark's mom's passing.

93. The matter was again discussed in Executive Session on August 16, 2018. Mr. Kazmark had the opportunity to explain his concerns about harassment and the intimidating environment being created by the Council. Even after Mr. Kazmark had explained and addressed certain issues, Councilman Dombrowski made a statement that continued the hostile environment and even went so far as to accuse him of "extortion." It was at that moment that Mr. Kazmark knew that the non-stop attacks upon him and the council's continued harassment and violation of the law would never stop.

94. Members of the Governing Body made calls and paid visits to elected and appointed Democratic Party officials in order to disparage and defame Mr. Kazmark's name and standing within the party and community. The Mayor visited and called the State and Passaic County Democratic Chairman John Currie, Bergen County Democratic Chairman Lou Stellato and Congressman Bill Pascrell in a further attempt to intimidate and harass Mr. Kazmark. None of these men acted upon his requests. However, the message was clear to Mr. Kazmark – that his career in Elmwood Park was over.

#### **Dinner Comments – October 29, 2018:**

95. At a political campaign dinner on October 29, 2018, supporting Denise Ingui and Doris Wechtler for Council, Councilman Joseph Dombrowski made comments during his remarks to the crowd of approximately 100 people which were disparaging and impugned Mr. Kazmark's reputation in his obsessed assault on Mr. Kazmark's character. He stated, in front of the crowd, which included Woodland Park constituents and former professional colleagues, that Mr. Kazmark was a "liar" and further advanced his cause to tarnish Mr. Kazmark's work as the Borough Clerk/Administrator in Elmwood Park for 12 years.

96. Multiple individuals in attendance contacted Mr. Kazmark immediately following the event and in the days following to question what he was referring to and why he felt the need to use 85% of his speech to talk about him.

#### **False Accusation of Stealing Documents:**

97. At the February 14, 2019 Work Session (minute 46:00 on audio recording), Councilman Joseph Dombrowski, referenced the public's access to the Municipal Building. He discussed security and then stated that "former employees" have "walked through the building and there was a situation where a potential file was missing – and then it showed up." The insinuation was that the individual involved was Mr. Kazmark. Then, the Police Chief made recommendations as to how to improve security. Councilman Dombrowski then doubled down and stated that, "We have a serious (problem)... we had a former employee, the former Borough Clerk, walk into the building and nobody said boo. Again, he's welcome to come into the

building, but he doesn't have the right to come beyond that desk." In listening to the audio, there is an implication made that Mr. Kazmark stole a file containing Borough documents. These comments continued to be made, even after Mr. Kazmark's departure from Elmwood Park in a continuing and never-ending pattern of harassment and campaign to impugn Mr. Kazmark's character and integrity.

98. Since Mr. Kazmark's forced resignation, Mr. Kazmark he has been in the Elmwood Park Municipal Building four times, none of which were between the Marcal fire which was referenced on the audiotape and the February 14, 2019 Council Meeting.

99. In addition to what has already been stated, herein and above, Keith Kazmark was constructively forced to resign his position with the Borough of Elmwood Park as an alternative to continued harassment and intimidation. As such, the Borough's actions are tantamount to a "constructive discharge," contrary to State and Federal Law, and illegal.

100. The Borough violates several State and Federal Laws, based upon the fact that Keith Kazmark made the elected officials and/or law enforcement officials aware of improper and possibly illegal activities. Instead of addressing the reported misconduct, the Borough constructively discharged the whistleblower Keith Kazmark. In New Jersey, an employee is to be protected when bringing improper and illegal activities to the attention of his or her supervisors. Here, the treatment of Keith Kazmark after bringing improper illegals conduct to the attention of his supervisors was wrong, vindictive and retaliatory – in violation of clearly established laws. See: New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et seq., including but not limited to: C.E.P.A.

101. The actions taken against Keith Kazmark as outlined above, as well as others, constitute direct retaliation against Keith Kazmark, as a result of his protected activities in violation of NJ-LAD and C.E.P.A. The actions of the Mayor and Council against Keith Kazmark include, but are not limited to a hostile work environment, a change in terms and conditions of employment, and an overall change to the manner in which Keith Kazmark was treated after reporting the said illegal activities, retaliation, intimidation, bullying and a negative change to the terms of his employment.

102. The actions and/or inactions of the Mayor and Council constitute a severe, pervasive and continuing course of misconduct in violation of NJ-LAD. C.E.P.A, Federal Law, State and Prevailing Employment Practices.

103. As a result, Keith Kazmark's Statutory Rights have been violated and his protections under the law have been eviscerated.

104. Due to this harassment and emotional distress, Keith Kazmark has suffered damages in the form of compensatory damages, incurred legal fees, and required various healthcare treatments resulting from the hostile and retaliatory actions of the Mayor and Council. As well as other damages.

## II. CAUSES OF ACTION

### FIRST COUNT

#### VIOLATION OF NEW JERSEY CONSCIENTIOUS EMPLOYEE PROTECTION ACT – HOSTILE WORK ENVIRONMENT AND RELATED EMOTIONAL DISTRESS, VOCATIONAL DISABILITY AND CONSTRUCTIVE DISCHARGE CLAIMS. (Denied)

1. Plaintiff repeats and re-alleges each allegation contained within the Statement of the Case and all paragraphs herein, as if set forth herein and again, at length.
2. New Jersey's Conscientious Employee Protection Act (CEPA) allows an employee an action for retaliation when the employee disclosed, threatens to disclose, objects to, or refuses to participate in certain actions the employee reasonably believes are either illegal, fraudulent, or a violation of a clear mandate of public policy, and is then subject to an adverse employment action(s) such as a hostile work environment.
3. Mr. Kazmark disclosed to his superior in the borough of Elmwood Park the conduct of the elected officials (subordinate, coequal and superior), which he reasonably believed was unlawful and/or was a violation of a clear mandate of public policy including, but not limited to, the following:
4. Plaintiff Kazmark also engendered the enmity of Elmwood Park's Elected officials and his superiors by refusing to abide a pervasive "to get along, you go along" culture existing within the Borough of Elmwood Park where supervisors are expected not to report unlawful behavior of workers up the chain of command, but instead are expected to sweep it under the rug. The existence of this work culture with the Borough of Elmwood Park serves as a violation of a clear mandate of public policy which seeks to

promote the fair and efficient operation of local, county and law enforcement agencies, and the existence of a safe and harassment-free work environment.

5. Plaintiff Kazmark was the antithesis of this "see no evil, hear no evil, speak no evil" ethos of the Borough of Elmwood Park because he was a good and diligent supervisor who performed his job by the book and insisted that others who he supervised do the same. Rather than be supportive of Keith Kazmark's efforts to promote a legal and ethical governmental administration, his supervisors either condoned or ratified by inaction the unlawful misbehavior of coworkers and elected officials or chose instead to berate him because he didn't "let things slide".

6. The retaliatory harassment and unrelenting vilification Keith Kazmark has caused him personal, professional and physical harm. Plaintiff files this lawsuit seeking to hold Elmwood Park legally accountable for all the harms caused to her by their responsible officials, officers, managers, supervisors, agents and/or employees.

7. Mr. Kazmark is a person protected under CEPA because he disclosed, objected to, and refused to engage in activities engaged in by his managers, supervisors, and employer which she reasonably believed were violations of law and regulations and rules related thereto and/or violations of clear mandates of public policy.

8. After making his disclosures, objections, and refusals, Mr. Kazmark was subject to retaliation in the form of a hostile work environment, was caused to become mentally and emotionally disabled, was rendered unable to work, and was effectively and constructively discharged from employment.

9. By their joint and several acts and omissions, defendants: Elmwood Park, John and Jane Does (1-10) and XYZ Corporations (1-10). incited, aided, abetted, and otherwise

conspired with each and their respective elected officials, officers, managers, supervisors, agents and/or employees create for Kazmark a retaliatory based hostile work environment so intolerable that it resulted in his being constructively discharged.

10. By their joint and several acts and omissions, defendants Borough of Elmwood Park, John and Jane Does (1-10) and XYZ Corporations (1-10). incited, aided, abetted, and otherwise conspired with each and their respective officials, officers, managers, supervisors, agents and/or employees create for Mr. Kazmark a retaliatory based hostile work environment so intolerable that it resulted in his involuntary constructive discharge from employment with the Borough of Elmwood Park.

11. Elmwood Park is liable as a matter of law for the unlawful acts and/or omissions of their respective officials, officers, managers, supervisors, agents and/or employees

12. The legislature has determined that persons subjected to unlawful retaliation may suffer diverse and substantial hardships which give rise to remedies under CEPA, including compensatory damages: economic loss; physical and emotional distress; search and relocation difficulties; anxiety caused by a lack of information, uncertainty and resultant planning difficulty; career, education, family and social disruption; adjustment problems; and severe emotional trauma, illness, homelessness, or other irreparable harm resulting from the strain of employment controversies.

13. Because of the joint and several acts and omissions of defendants Borough of Elmwood Park John and Jane Does (1-10) and XYZ Corporations (1-10). incited, aided, abetted, and otherwise conspired with each and their respective elected officials, officers, managers, supervisors, agents and/or employees John and Jane Does (1-10) and XYZ Corporations (1-10), as has been recited in this Complaint, Mr. Kazmark has suffered



economic losses and pecuniary damage in the form of lost income and benefits past, present and future.

14. Because of the joint and several acts and omissions of defendants Borough of Elmwood Park, and their respective elected officials, officers, managers, supervisors, agents and/or employees together with John and Jane Does (1-10) and XYZ Corporations (1-10) as has been recited in this Complaint, Mr. Kazmark has been constructively discharged, and has and continues to suffer economic losses and pecuniary damage in the form of lost income and benefits past, present and future.

15. As a result of the joint and several acts and omissions of defendant, Borough of Elmwood Park, and their respective elected officials, officers, managers, supervisors, agents and/or employees together with John and Jane Does ( 1-10) and XYZ Corporations (1-10) as has been recited in this Complaint, Mr. Kazmark has been and continues to suffer non-economic damages with physical manifestations – which may be permanent.

**WHEREFORE**, Plaintiff Keith Kazmark demands judgment against the Defendants the Borough of Elmwood Park, County of Passaic, John Doe 1-10, and XYZ Corporations (1-10), jointly and severally, and requests the following relief:

a. Directing the Defendants to make Plaintiff Mr. Kazmark whole for any and all losses he has suffered in the past, present, and in the future in terms of lost wages, benefits, insurance, and pension coverage, and any other fringe benefits of his employment;

b. Directing the Defendants, in lieu of reinstating Plaintiff Mr. Kazmark to his former position with Elmwood Park Sheriff, to fully compensate him with front pay and benefits for the retaliatory acts;

c. Directing Defendants to pay Plaintiff Mr. Kazmark compensatory and consequential damages for all non-economic damages including, but not limited to, mental and emotional distress damages, suffered because of Defendants' retaliatory acts in violation of New Jersey Conscientious Employee Protection Act;

d. Directing the Defendants to pay Plaintiff Mr. Kazmark punitive damages because the acts of Defendants and its agents, servants, and employees were especially egregious, evil-minded and/or were committed with a wanton and willful disregard for the rights of Plaintiff;

e. Directing Defendants to pay Plaintiff Mr. Kazmark for all her attorneys' fees and costs incurred to the full extent permitted under N.J.S.A.34:19-1 et seq. and Rendine v. Pantzer, 141 N.J. 292 (1995).

f. Awarding interest and costs of suit;

g. Plaintiff requests equitable relief in the form of the Court declaring that the practices of the named Defendants contested herein violate New Jersey law as set forth herein;

h. Plaintiff requests equitable relief in the form of the Court ordering the named Defendants to cease and desist all conduct inconsistent with the claims made herein going forward, both as to the specific Plaintiff and as to all other persons similarly situated;

i. Plaintiff requests equitable relief in the form of the Court Ordering Defendants Borough of Elmwood Park to expunge and otherwise purge from its files and records including, but not limited to, Plaintiff's personnel file maintained by the said Defendant any reference which violates the statutes implicated in the above-captioned action; and

j. Granting Plaintiff such relief as the Court deems just and proper.

## SECOND COUNT

### COMMON LAW PUBLIC POLICY CLAIM

#### (PIERCE CLAIM)

1. Plaintiff repeats each allegation set forth in all paragraphs of this complaint and the First Count of the Complaint as if set forth at length herein, which precedes this Second Count of the Complaint.

2. In Pierce v. Ortho Pharmaceutical Corp., 84 N.J. 58, 72 (1980) the Supreme Court established a New Jersey public policy exception to at-will employment. The Supreme Court established that:

An employee has a cause of action [in tort or contract or both] for wrongful discharge when the discharge is contrary to a clear mandate of public policy. The sources of public policy include legislation; administrative rules, regulations, and decisions; and judicial decisions. In certain instances, a professional code of ethics may contain an expression of public policy.

3. The public policies of the State of New Jersey underpinning Plaintiff Mr. Kazmark's complaints are found, inter alia, in the statutes, codes, and regulations applicable to business practices, fraud, and international law.

4. The above facts establish a public policy violation.

5. Because of the retaliatory actions undertaken by Defendants, Borough of Elmwood Park, John and Jane Does (1-10) and XYZ Corporations (1-10), jointly or severally, Plaintiff Kazmark has been and continues to suffer economic losses and pecuniary damage in the form of lost income and benefits past, present and future.

6. Because of the retaliatory actions undertaken by Defendants, Borough of Elmwood Park Sheriff and the County of Passaic, John and Jane Does (1-10) and XYZ

Corporations (1-10), jointly or severally, Plaintiff Kazmark has been and continues to suffer non-economic damages in the form of humiliation, and physical damages.

7. This claim is also for all common-Law causes of Action that Mr. Kazmark is entitled to above.

### **JURY DEMAND**

Plaintiff hereby demands a trial by jury on all issues triable in this action.

### **DESIGNATED TRIAL ATTORNEY**

Stephen Wellinghorst, Esq., is hereby designated as plaintiff's trial attorney.

### **CERTIFICATION**

I hereby certify to the best of my personal knowledge that the matter in controversy is not the subject of any other action pending in any Court or of a pending arbitration proceeding, nor is any other action or arbitration contemplated, nor any other parties to be joined EXCEPT for the joinder of the true persons in interest whose names are identified herein as defendants John and Jane Does (1-10) and XYZ Corporations (1-10).

HARWOOD LLOYD, LLC

By: 

STEPHEN WELLINGHORST

Attorneys for Plaintiff, Keith Kazmark

Dated: September 3, 2019

### **NOTICE PROHIBITING SPOILIATION OF EVIDENCE**

PLEASE TAKE NOTICE, failure to prevent spoliation of evidence can result in severe sanctions being imposed by the Court. Furthermore, your obligations to preserve documents and things for discovery in this case arise in law and equity independent of any Order of court or notice from our office. You are hereby placed on notice not to destroy, conceal or alter any paper or electronic files and other data generated by and/or stored on computers and storage media (e.g., hard drives, hard disks, floppy disks, backup tapes, email accounts), or any other electronic data maintained by the named defendants, such as surveillance or voice mail, that may be construed in any manner as potentially discoverable information in this litigation.

#### **(A) AS TO THE PRESERVATION OF VIDEOS, SURVEILLANCE MATERIALS, OUT-TAKES, PHOTOGRAPHS, ETC.:**

In accordance with the above request for the avoidance of spoliation of any evidence please be further guided by the following specific request for preservation.

- a. All photographs, slides, videotapes, or audiotapes, transcripts, or memoranda thereof, and/or motion pictures, surveillance photographs/motion pictures, outtakes, tape recording, movies, visual, optical and/or audio and/or magnetic reproductions of descriptions of plaintiff purporting to depict the plaintiff, plaintiff's activities, actions, speech, etc.;
- b. All photographs of the scene of the underlying occurrence;
- c. The time records, records of amount of footage of film or videotape used; the

type of equipment used to take, develop, and convert such film or videotape; the make and model of all equipment, lenses and range settings employed by defendant(s) and/or defendant('s)(s') photographers, investigators, and/or other used or associated in conjunction with the surveillance, tape recordings, etc., of the plaintiff and all memoranda pertaining thereto.

**NOTE:** If the defendant(s) fails to preserve and/or otherwise disclose such surveillance materials (using the words generically), then plaintiff may:

- (1) Move at the trial to exclude all such surveillance and its by-products; and/or
- (2) Move to exclude/suppress all of plaintiff's deposition testimony relating to the improperly suppressed/undisclosed pre-deposition surveillance materials and its progeny; and/or
- (3) Seek other appropriate and equitable relief by reason of defendant('s)(s') noncompliance.

HARWOOD LLOYD, LLC

By: 

STEPHEN WELLINGHORST  
Attorneys for Plaintiff, Keith Kazmark

Dated: September 3, 2019

**DEMAND FOR JURY TRIAL**

Defendants hereby demand a trial by jury on all issues so triable.



**DESIGNATION OF TRIAL COUNSEL**

Pursuant to the provisions of R.4:25-4, the Court is hereby advised that Stephen Wellinghorst, Esq. of the law offices of HARWOOD LLOYD, LLC is hereby designated as Trial Counsel.

HARWOOD LLOYD, LLC

By: 

STEPHEN WELLINGHORST  
Attorneys for Plaintiff, Keith Kazmark

Dated: September 3, 2019

**CERTIFICATION**

I hereby certify that to the best of my knowledge, the matter in controversy in the above-captioned civil action is not the subject of any other action pending in any Court, or of any pending arbitration or administrative proceedings.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

HARWOOD LLOYD, LLC

By: 

STEPHEN WELLINGHORST  
Attorneys for Plaintiff, Keith Kazmark

Dated: September 3, 2019